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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/701,512	11/30/2000	Teruhiko Imoto	001431	5196

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EXAMINER

MERCADO, JULIAN A

ART UNIT PAPER NUMBER

1745

DATE MAILED: 05/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application N .

09/701,512

Applicant(s)

IMOTO ET AL.

Examiner

Julian A. Mercado

Art Unit

1745

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 27 April 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. **ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).**

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 2, 4, 5.

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

**Patrick Ryan**   
**Supervisory Patent Examiner**  
**Technology Center 1700**

Continuation of 5. does NOT place the application in condition for allowance because: of the following reasons: applicant appears to acknowledge Rendina's teaching of a heat sintering step (applicant's response on page 3). As to the composition of Ise et al. and Rendina's not being "sufficiently similar" to warrant the examiner's reasoning for obviousness, in reply the examiner maintains that both Rendina and Ise et al.'s respective teachings are drawn to a hydrogen storage alloy of the AB<sub>x</sub> type for use in a hydrogen occluding alloy for a secondary battery. Thus, the extent to which Rendina's disclosure may be arguably drawn to a different type of hydrogen storage alloy from that disclosed in Ise et al. is not persuasive. As to there being no suggestion in Rendina or Ise et al. to achieve effects such as outer surface migration of Mn, inter alia, as set forth in the prior Office Action this effect and others argued by applicant are outside the scope of the present claims. That applicant may have a result arguably not taught or suggested by the prior art does not preclude the prior art from having its own teaching or suggestion to support a rejection based on a combination of references. In this regard, Rendina is maintained to render obvious a modification of Ise et al. in employing a sintering step, inter alia, for reasons such as enhancement of binding. (Rendina, col. 12 lines 42-45 and 59-64) .